

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Kyle M. Parks,

Plaintiff,

v.

Case No. 2:20-cv-672

Ryan Schelderer,

Defendant.

ORDER

This is a civil rights action brought by Kyle M. Parks, a federal inmate proceeding without the assistance of counsel, against Special Agent Ryan Scheiderer. On May 4, 2020, the magistrate judge filed a report and recommendation on the initial screen of plaintiff's complaint pursuant to 28 U.S.C. §§1915(e)(2) and 1915A, which requires the court, in a civil action in which a prisoner seeks redress from a governmental officer or employee, to dismiss a complaint that fails to state a claim upon which relief may be granted. 28 U.S.C. §1915A(a)-(b)(1). The magistrate judge recommended that the plaintiff's claim under 18 U.S.C. §1346 be dismissed for failure to state a claim on which relief may be granted because that criminal statute does not create a private cause of action. The magistrate judge further recommended that plaintiff's claim against the defendant Schelderer under 42 U.S.C. §1983 be dismissed insofar as this claim was asserted against the defendant in his official capacity. The magistrate judge recommended that plaintiff be permitted to proceed on his Fourth Amendment claim against the defendant in his individual capacity.

The report and recommendation advised plaintiff that the failure to object to the report and recommendation would result in

a waiver of the right to de novo review by the district judge and a waiver of the right to appeal the judgment of the district court. Doc. 9, p. 8. Plaintiff responded to the report and recommendation by filing a notice on May 13, 2020, indicating that he accepted the magistrate judge's recommendations. No objections to the report and recommendation have been filed.

The court agrees with the report and recommendation (Doc. 9), and it is hereby adopted. The claim under 18 U.S.C. §1346 and any claim against defendant Schelderer in his official capacity are dismissed pursuant to 28 U.S.C. §§1915(e)(2)(B) and 1915A for failure to state a claim for which relief may be granted. Plaintiff will be permitted to proceed on his Fourth Amendment claim against defendant Schelderer in his individual capacity.

Date: June 1, 2020

s/James L. Graham
James L. Graham
United States District Judge